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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/521,442	03/07/2000	Gopinathan K. Menon	SC35U-US	1007
60723	7590	09/03/2009	EXAMINER	
AVON PRODUCTS, INC.			BARHAM, BETHANY P	
AVON PLACE			ART UNIT	PAPER NUMBER
SUFFERN, NY 10901			1615	
NOTIFICATION DATE		DELIVERY MODE		
09/03/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENT.DEPARTMENT@AVON.COM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/521,442	MENON, GOPINATHAN K.
	<b>Examiner</b>	<b>Art Unit</b>
	BETHANY BARHAM	1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 12 August 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 36,38-40,42-44,46-48 and 50-54 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 36,38-40,42-44,46-48 and 50-54 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date, \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Summary***

Receipt of Applicant's Response filed on 8/12/09 is acknowledged. Claims 36, 38-40, 42-44, 46-48 and 50-54 are pending and rejected. Upon further consideration, finality of the previous office action is withdrawn and prosecution reopened.

***Response to Arguments***

Applicant's arguments are persuasive and the previous rejections of record are hereby withdrawn.

**NEW REJECTIONS**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36, 38-40, 42-44, 46-48 and 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okuno et al (1997) as evidenced by "perilla oil" (wikipedia) and US 5,705,170 ('170) in view of USPN 4,006,218 ('218) or USPN 4,537,776 ('776).

The instant claims are drawn to a method of ameliorating or treating cellulite, comprising topically applying a composition comprising from about 0.01 wt% to about 10 wt% perilla oil to an area of skin affected by cellulite.

- Okuno et al teach that rats fed perilla oil had less fat tissue and less adipose tissue growth and that PPAR-alpha expression was significantly down regulated in epididymal fat tissue (abstract, p. 1752 and p. 1756, bottom of column 1).

Okuno et al teach delivering 12g perilla oil in 100 g of food and that animals had free access to food daily (p. 1753, "animals" and "diets"). As evidenced by "perilla oil" wikipedia, perilla oil is obtained from the seeds of perennial herbs of the genus *Perilla*, usually *Perilla frutescens*. According to '170 cellulite is a disorder of the skin and underlying tissues that leads to unsightly accumulations of adipose tissue and fatty tissue (col. 1, lines 4-28), thus lessening fat and adipose tissue growth as taught by Okuno et al would also decrease cellulite (according to the limitations of claim 36 and 40).

- Okuno does not teach topical administration of instant claim 36 or about 0.01-about 10% by weight or other specific weight percents as in claims 38, 39, and 52 or that it is topically applied one or two times per day of instant claims 44, 46-48, 50-51 and 54.
- '218 teaches that topical applications, especially in dermatological conditions, is preferred over systemic administration because the topically applied drug directly attacks the targeted cells and eliminates systemic side effects that are frequently associated with long term oral therapy; and various solvents are known to

enhance the absorption of topically applied drugs through the stratum corneum (col. 2, lines 5-15). '218 teaches that the active component is incorporated in an amount from 1-10% (col. 9, lines 41-43). '218 teach once or twice daily use (Examples) (meeting the limitations of claims 36, 38-40, 42-44, 46-48 and 50-54).

- '776 teaches that ease of access, dynamics of application, large surface area, non-invasive treatment, etc are benefits to delivery of an active agent through the skin and that systemic/oral delivery can results in variable rates of absorption/metabolism, gastrointestinal tract irritation, etc (col. 1, lines 13-29). '776 teaches that topical delivery of an active agent is most important for local treatment or which exhibit local manifestations (col. 1, lines 13-29). '776 teaches that the active agent is included in about 0.01% to about 10%, highly preferred 1-5% (col. 9, lines 13-17). '776 teaches that the composition can be applied once daily or every 12 hours (col. 24, lines 26-30) (meeting the limitations of claims 36, 38-40, 42-44, 46-48 and 50-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Okuno et al and '170 in view of '218 or '776. A skilled artisan would know how to combine the known product/method of perilla oil to down regulate PPAR-alpha expression and decrease fat/adipocyte tissue of Okuno et al and '170, with the known technique of formulating and applying topical administration of an active of '218 or '776. It is within the purview of the skilled artisan to use a combine a known product/method (Okuno et al and '170) and a known technique ('218 or '776) with predictable results.

Claims 36, 38-40, 42-44, 46-48 and 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okuno et al (1997) as evidenced by "perilla oil" (wikipedia) and US 5,705,170 ('170) in view of JP 07187989 ('989) or JP 08119829 ('829).

- Okuno et al teaches that rats fed perilla oil had less fat tissue and less adipose tissue growth and the PPAR-alpha expression was significantly down regulated in epididymal fat tissue (abstract, p. 1752 and p. 1756, bottom of column 1).

Okuno et al teaches that Okuno et al teaches 12g perilla oil in 100 g of food and that they had free access to food daily (p. 1753, "animals" and "diets"). As evidenced by "perilla oil" wikipedia: perilla oil is obtained from the seeds of perennial herbs of the genus *Perilla*, usually *Perilla frutescens*. According to '170 cellulite is a disorder of the skin and underlying tissues that leads to unsightly accumulations of adipose tissue and fatty tissue (col. 1, lines 4-28), thus lessening fat and adipose tissue growth as taught by Okuno et al would also decrease cellulite (according to the limitations of claim 36 and 40).

- Okuno does not teach topical administration of instant claim 36 or about 0.01-about 10% by weight or other specific weight percents as in claims 38, 39, and 52 or that it is topically applied one or two times per day of instant claims 44, 46-48, 50-51 and 54.
- '989 teaches that topical applying a perilla oil composition containing 1% perilla oil to improve skin appearance (abstract) (meeting the limitations of claims 36, 38, 40, 42, 44, 46, 48, 50 and 52-54).

- '829 teaches external skin medicine comprising a perilla oil composition (abstract) with perilla oil present in an amount of 0.0001-10% by weight, preferably 0.1-5% [0010] and even more preferably 0.001-3% [0013]. '829 teaches that it is extract from the seed of the perilla frutescens plant [0008]. '829 Examples teach that women use the skin lotion 2 times daily [0035] (meeting the limitations of claims 36, 38-40, 42-44, 46-48 and 50-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Okuno et al and '170 in view of '989 or '829. A skilled artisan would know how to combine the known product/method of perilla oil to down regulate PPAR-alpha expression and decrease fat/adipocyte tissue of Okuno et al and '170, with the known technique of formulating and applying topical administration of an active of '989 or '829. It is within the purview of the skilled artisan to use a combine a known product/method (Okuno et al and '170) and a known technique ('989 or '829) with predictable results.

#### **CITED AS INTEREST**

According to "Perilla oil" from wikipedia, "Perilla oil is obtained from the seeds of perennial herbs of the genus *Perilla*, usually *Perilla frutescens*".

#### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany Barham whose telephone number is (571)-272-

6175. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Bethany Barham  
Art Unit 1615

*/MP WOODWARD/*  
Supervisory Patent Examiner, Art Unit 1615

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